IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.1071 OF 2006

Sheth Govindraoji Ayurved
Mahavidyalaya .... Petitioner
Vs.
Ambadas Shivappa Patil & Anr. .... Respondents

Shri Girish S. Godbole with Ms Manjiri Parasnis for the Petitioner.

None for the Respondent Nos.1 and 2, though served.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 07, 2006

P.C:

1. Heard the learned Advocate for the petitioner. None present for the respondents, though served.

2. The notice was issued for final disposal of the petition, yet none of the respondents have chosen to appear before this Court. Apparently, the respondents do not seem to be interested in contesting the petition.

3. The facts of the case disclose that the petitioner is an Ayurved College and is run by a private Trust and receives hundred percent grant from the Government of Maharashtra. The respondent No.1 was employed as a professor in the petitioner-College and he retired from the service on 28-2-1994. After a period of about

seven-and-half years, on 24-9-2001 the respondent No.1 filed an application before the Controlling Authority under Section 7(4) of the Payment of Gratuity Act, 1972, hereinafter referred to as "the said Act" r/w Rule 10(1) of the Rules framed thereunder, seeking gratuity of a sum of Rs.82,050/- from the petitioner. The Controlling Authority has allowed the application by order dated 21-12-2004 granting gratuity of a sum of Rs.75,514/- to the respondent No.1. A notice came to be issued to the petitioner by the Controlling Authority on 23-12-2004 under Section 17 of the said Act for payment of gratuity to the respondent No.1. The same was followed by an application by the respondent No.1 dated 9-2-2005 for recovery of gratuity amount from the petitioner. The petitioner filed its say on 13-6-2005 raising preliminary objection regarding the jurisdiction as well as bringing to the notice of the Controlling Authority the decision of the Apex Court in **Ahmedabad (P.) Primary Teachers' Association v. Administrative Officer,** reported in 2004 I CLR 495. The Controlling Authority, however, refused to dispose of the recovery proceedings and hence the petitioner preferred the present petition.

4. It is pertinent to note that along with the present petition various other petitions were filed by the petitioner as well as some other institutions and those petitions were disposed of by the learned single Judge

on 7-6-2006.

5. While considering the question as to whether the teachers of an educational institution can be held to be employees under Section 2(e) of the said Act to enable the teachers to claim gratuity, the learned single Judge in **Writ Petition Nos.1069, 1070 and 1072 of 2006**, in his Judgment dated 7-6-2006, after taking into consideration the decision of the Apex Court in **Ahmedabad (P.) Primary Teachers' Association's** case (supra) as also the decision in **Haryana Unrecognised Schools Association v. State of Haryana,** reported in (1996) 4 SCC 225 as well as the decisions of this Court in **P.D. Rao Deo v. Pri. St.P.C.H. School and Ors.,** reported in 1997 II LLJ 1050, **Miss A. Sunderambal v. Govt. of Goa, Daman and Diu and others,** reported in 1983 II LLJ 491 as also the decision of the Apex Court in **Sundarambai v. Govt. of Goa, Daman and Diu,** reported in AIR 1988 SC 1700 and further the decisions of single Judges in **Principal, Bharatitya Mahavidyalaya, Amravati and others v. Ramkrishna Wasudeo Lahudkar,** reported in 1994 II LLJ 556 as well as **General Education Academy, Chembur, Mumbai v. S.V. Desai and others,** reported in 2001 II LLJ 273 and of the Gujarat High Court in **Shantiben L. Christian v. Administrative Officer,** reported in 2001 II LLJ 1007, held that the teachers do not answer the description of being employees falling in either of the categories

prescribed under Section 2(e) of the said Act and, therefore, the teachers cannot claim to be employees within the meaning of the said expression under the said Act.

6. In the present petition also, the same issue arises and the facts also being not different from the facts of the case in **Writ Petition No.1069 of 2006** (supra), already decided on 7-6-2006, the present petition is fully covered by the said decision and for the same reason, the impugned order cannot be sustained and is liable to be quashed and set aside.

7. In the result, therefore, for the reasons stated above, the impugned order is hereby quashed and the petition is allowed in terms of the prayer clauses (a) and (b), with no order as to costs.

(R.M.S. Khandeparkar, J.)

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